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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,465	09/25/2000	Mikhail Prokopenko	169.1856	2125
5514	7590	02/23/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			BELIVEAU, SCOTT E	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	
			2614	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/668,465

**Applicant(s)**

PROKOPENKO ET AL.

**Examiner**

Scott Beliveau

**Art Unit**

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,8,9,11,12,14,16,17,19,20,22,24 and 70-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,9,12,14,17,20,22 and 70-78 is/are rejected.
- 7) ☒ Claim(s) 3,8,11,16,19 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1, 9, and 17 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1, 4, 6, 9, 12, 14, 17, 20, 22, 70, 71, 73, 74, 76, and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClard (US Pat No. 6,438,752 B1).

In consideration of claim 1, the McClard et al. reference discloses a method for enabling the selection of a program for viewing in a television system (Figure 1). The method "records a plurality of attributes associated with each program viewed by a user, said

attributes comprising first attributes associated with characteristics of said programs” such as associated attributes with a particular content/genre and “second attributes associated with the viewing of said programs” such as time viewed and channel (Col 5, Line 52 – Col 6, Line 14). Subsequently, “upon entry of a user request for a program recommendation” [74/76], the system “forms sets of said attributes, where each of said sets comprise at least two of said attributes” (ex. current time-channel or current time-content genre in connection with “performing a search of the EPG data for programs with attributes that include all attributes of at least one of said sets” and to subsequently “notify said user” as to the “availability of programs that include all the attributes of at least one of said sets as program recommendations” (Col 6, Line 16 – Col 8, Line 58). For example, upon the user selecting a recommendation based upon the current time and category, the system forms a “set” of records associated with those attributes and based upon the set associated with the highest reception frequency finds programs with the same attributes (ex. sports programs currently being shown).

As to the particular limitation that the aforementioned “first attributes are made available as Electronic Program Guide (EPG) data”, the reference discloses the existence of electronic program guides (Col 1, Lines 22-27) and a headend based program information database [36] that stores and downloads program information to the local receiver (Col 4, Lines 35-39). However, it is unclear if the particular program information is further “made available as Electronic Program Guide (EPG) data”. The examiner takes OFFICIAL NOTICE that it is notoriously well known in the art so as to make “first attribute data” such as content/genre “available as Electronic Program Guide (EPG) data”. Accordingly, it would have been

obvious to one having ordinary skill in the art at the time the invention was made so as to utilize the aforementioned “first attribute data” as Electronic Program Guide (EPG) for the purpose of advantageously informing the user as to available programming in an efficient or readily traversable manner through the usage of filtering criteria including content/genre in a manner that facilitates the organization of programming of interest.

Claim 9 is rejected wherein the embodiment comprises “memory means” [52], “processing means” [50], “searching means” [50], and an “on-screen display means” [40] (Col 4, Line 40 – Col 5, Line 19).

Claim 17 is rejected in view of claim 1 wherein the aforementioned method may be implemented via a “computer program product” that is executed via the aforementioned processor means [50].

Claims 4, 6, 12, 14, 20, and 22 are rejected wherein “program recommendations are based on programs with the greatest number of attributes included in said sets” such that recommendations are based upon only those programs with the “greatest number of attributes” or all of the attributes (ex. current time – type/genre).

Claims 70, 73, and 76 are rejected wherein each “set” is associated with a “value” corresponding to the reception frequency “. . . representing the number of programs viewed by said user including the attributes in said set, wherein said search is performed for programs with attributes that include the attributes of the set with a highest value” (Col 6, Lines 15-31).

Claims 71, 72, 74, 75, 77, and 78 are rejected wherein “said second attributes associated with the viewing of said programs include user information” or information that “includes

one or more of time of data and day of week information” (Col 5, Lines 62-65) which is “combined” with the “said EPG data” into a record set in order to formulate the set of records for comparison to the current program list as aforementioned.

*Allowable Subject Matter*

5. Claims 3, 11, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to the art of record, based on the examiner’s interpretation of the particular usage of “user information” being associated with the particular time the user viewed a selected program, the further limitation that the “user information includes a mood being experienced by said user” is not taught or suggested by the rejection of record.
6. Claims 8, 16, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to the art of record, the interpretation based on the creation of sets of attributes is based upon the premise that the sets are formed in response to the user requesting a program recommendation and are not necessarily based upon the intersection of attributes between programs. Accordingly, McClard fails to disclose or suggest the limitation wherein the “sets of said attributes are formed in response to that at least two of programs viewed by said user have shared attributes”.

*Conclusion*

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Trovato et al. (US Pat No. 6,445,306) reference discloses a remote control system that is operable to recommend programs to user's based upon categorization and time-dependent criteria.
- The Bruette et al. (US Pat No. 5,694,176) reference provides evidence that it is well known in the art to make content/genre information available as EPG data.
- The Whiteis (US Pat No. 5,749,081) reference discloses a method for recommending videos based upon measurements of item similarities.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

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to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

(toll-free).

A handwritten signature in black ink, appearing to be 'SEB' followed by a stylized flourish.

SEB

February 21, 2005